

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**CHARLES LUBIN d/b/a LUBIN)
ADVISORY GROUP, LLC,)**

Plaintiff,)

v.)

DCT SYSTEMS GROUP, LLC,)

Defendant.)

CIVIL ACTION

FILE NO. 1:13-cv-02206-ODE

JOINT MOTION TO SUBSTITUTE PARTY

The parties in this action, Plaintiff Charles Lubin d/b/a Lubin Advisory Group, LLC and Defendant DCT Systems Group, LLC, jointly requests that the Court substitute **Niloy, Inc. d/b/a DCT Systems Group** as the proper defendant (and counter-claimant) in the place of DCT Systems Group, LLC, which was improperly named as a defendant, showing as follows:

(1) While doing business as “DCT Systems Group,” the entity Niloy, Inc. is the legal entity that contracted with Lowe’s Companies, Inc. pursuant to a Master Professional Services Agreement (“MPSA”), and for which Plaintiff claims to have provided professional services pursuant to a Sub-Contracting/Consulting Agreement. Attached hereto as Exhibit A is a true and correct copy of the first and

last page of the MPSA, which shows Niloy, Inc. d/b/a DCT Systems Group as the proper party.

(2) The currently-named defendant, DCT Systems Group, LLC, while sharing common ownership with Niloy, Inc., is a separate legal entity with no relationship – whether by contract or otherwise – to Lowe’s or Plaintiff. Instead, DCT Systems Group, LLC is a single purpose entity that holds real estate.

(3) Federal Rule of Civil Procedure 21 provides that “Misjoinder of parties is not a ground for dismissing an action. On motion or on its own, the court may at any time, on just terms, add or drop a party.” Fed. R. Civ. P. 21. “In so far as [Federal Rule of Civil Procedure 21] relates to the addition of parties, it is intended to permit the bringing in of a person who, through inadvertence, mistake or for some other reason, had not been made a party and whose presence as a party is later found necessary or desirable.” *Crews v. Blake*, 52 F.R.D. 106, 107 (S.D. Ga. 1971) (internal quotation marks and citation omitted).

(4) Rather than require dismissal of this action, Rule 21 of the Federal Rules of Civil Procedure allows for the substitution of parties to avoid the needless waste of re-starting legal proceedings. *Graves v. Walton Cnty. Bd. of Ed.*, 91 F.R.D. 457, 470 (M.D. Ga. 1981) *aff’d in part, rev’d in part sub nom. Graves v. Walton Cnty. Bd. of Educ.*, 686 F.2d 1135 (5th Cir. 1982) (finding it appropriate to allow substitution of

Parties under Federal Rule of Civil Procedure 21 because “(t)o dismiss the present petition and require the new plaintiffs to start over in the District Court would entail needless waste and runs counter to effective judicial administration.”).

(5) The substitution of “Niloy, Inc. d/b/a DCT System’s Group” as the proper defendant in this case will not affect the rights of the parties or cause undue delay. Niloy, Inc. agrees to the substitution and waives all service of the Complaint and Summons.

WHEREFORE, the parties jointly request that this Court substitute “NILOY, INC. d/b/a DCT SYSTEMS GROUP” in the place “DCT SYSTEMS GROUP, LLC,” and direct the clerk to reflect this change in the caption for this case.

A proposed Order is attached for the Court’s consideration.

<signatures on following page>

This 21st day of October, 2014.

/s/Janet E. Hill

(with express permission)

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*Counsel for Defendant DCT Systems
Group, LLC and Substitute Defendant
and Counter-Claimant Niloy, Inc. d/b/a
DCT Systems Group*

CERTIFICATE OF SERVICE

I hereby certify that on this day, I electronically filed this **JOINT MOTION TO SUBSTITUTE PARTY** with the Clerk of Court using the CM/ECF system which will send email notification of such filing to all attorneys of record.

This 21st day of October, 2014.

/s/ Jeremy Littlefield
Jeremy Littlefield